

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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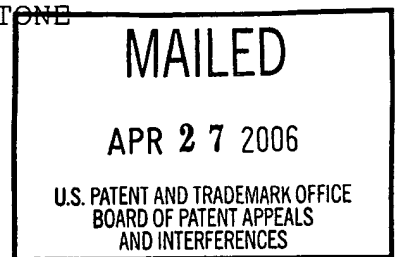
Ex parte ALAN WIGHTMAN and JEREMY JAMES STONE

Appeal No. 2006-1099  
Application No. 09/869,745

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ON BRIEF

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Before KIMLIN, KRATZ and FRANKLIN, Administrative Patent Judges.  
KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 22 and 24-44. Claim 22 is illustrative:

22. A nonwoven web material comprising cellulosic fibres and synthetic fibres selected from at least one of polyamide fibres, polyamide copolymer fibres, polyester fibres, polyester copolymer fibres, polyolefin fibres and polyolefin copolymer fibres, wherein the web material exhibits lower cross direction wet expansion than a similar web material comprising only the same cellulosic fibres.

The examiner relies upon the following references as evidence of obviousness:

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Ito et al. (Ito)	5,705,214	Jan. 6, 1998
Rose et al. (Rose)	WO 95/10190	Apr. 20, 1995
(published World Intell. Prop. Org. Patent Application)		

Appellants' claimed invention is directed to a nonwoven web comprising a mixture of cellulosic fibers and synthetic fibers selected from polyamides, polyesters and polyolefins. The nonwoven web of the present invention exhibits the characteristic that its cross direction wet expansion is lower than that of a similar web comprising only cellulosic fibers.

Appealed claims 22 and 24-36 stand rejected under 35 U.S.C. § 112, second paragraph. Claims 22 and 24-44 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rose in view of Ito.

We have thoroughly reviewed the respective positions advanced by the appellants and the examiner. In so doing, we find that neither of the examiner's rejections are sustainable.

We consider first the examiner's rejection of claims 22 and 24-36 under Section 112, second paragraph. According to the examiner, the claims "are indefinite because it is unclear what nonwoven webs would possess a lower cross direction wet expansion when compared to a similar wet material comprising only the same cellulosic fibers because the Appellant has not set forth a comparative value in the claim" (page 3 of answer, second

paragraph). However, we agree with appellants that one of ordinary skill in the art would readily understand that the nonwoven webs that have a lower cross direction wet expansion are those that comprise a mixture of cellulosic fibers and the recited synthetic fibers. The claims on appeal encompass only those webs wherein the mixture of fibers exhibit the claimed property. There is no requirement that the appealed claims specify a particular comparative value. The examiner presents the query "[w]hat exactly is the Appellant intending to claim: a nonwoven web comprising cellulosic fibers and synthetic fibers only or two nonwoven webs where one web contains synthetic fibers and one does not?" (page 8 of answer, second paragraph). However, inasmuch as the appealed claims clearly recite a nonwoven web comprising the specified fibers, we do not share the examiner's concern that one of ordinary skill in the art would understand that the claims embrace two nonwoven webs of different fibers.

We now turn to the examiner's Section 103 rejection. There is no dispute that Rose discloses a nonwoven web that may comprise a mixture of cellulosic fibers and synthetic fibers (see page 4, third paragraph). However, as emphasized by the appellants, Rose also teaches that "[t]he web's constituent

fibers should also exhibit uniform formation and absorbency characteristics" (page 4, third paragraph). Since the examiner has accepted appellants' evidence that the claimed polyamide, polyester and polyolefin fibers are known to be low in water absorbency, in contrast to cellulosic fibers, we concur with appellants that one of ordinary skill in the art would not have been motivated to select the claimed synthetic fibers for the web of Rose.

The examiner states agreement with appellants that "synthetic fibers such as nylon, polyester, acrylic and olefin have low absorbency [but maintains] it does not preclude the use of synthetic fibers" for the web material of Rose (page 11 of answer, second paragraph). However, the examiner misses the point of appellants' argument and evidence. Most surely, Rose teaches a web material comprising cellulosic fibers and synthetic fibers but, significantly, not the synthetic fibers recited in the appealed claims. While the examiner further maintains that "it is implied that the synthetic fibers [of Rose] can be utilized which have similar absorbency characteristics to the cellulosic fibers employed" (page 9 of answer, second paragraph), the examiner has not established that the claimed synthetic fibers have similar absorbency characteristics to cellulosic

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fibers. Indeed, the examiner has acknowledged otherwise.

Accordingly, based on the present record on appeal, we are constrained to reverse the examiner's Section 103 rejection.

One final point remains. Upon return of this application to the examiner, the examiner should consider the obviousness of the claimed subject matter over the disclosure of Ito as a primary reference. Unlike Rose, Ito expressly discloses a web or sheet of casing material comprising nonwoven fabrics of natural cellulosic fibers and synthetic fibers, such as polyester and nylon (see column 3, lines 14 et seq.). Manifestly, such a determination of obviousness should include a consideration of not only Ito but of any other prior art that the examiner deems relevant.

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In conclusion, based on the foregoing, the examiner's decision rejecting the appealed claims is reversed.

REVERSED

Edward C. Kimlin  
EDWARD C. KIMLIN  
Administrative Patent Judge

  
PETER F. KRATZ  
Administrative Patent Judge

BOARD OF PATENT  
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Beverly A. Franklin  
BEVERLY A. FRANKLIN  
Administrative Patent Judge

ECK:hh

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ALIX YALE & RISTAS, LLP  
750 MAIN STREET  
STE. 1400  
HARTFORD, CT 06103